



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 31, 1998

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR98-3311

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 120800.

The City of Houston (the "city") received a request for "copies of permit records on all 45 buildings" located at 11555 Airline Drive. In response to the request, you submit to this office for review a representative sample of the information which you assert is responsive.¹ You explain that the city has informed "the requestor that a portion of the requested records will be made available to him." However, you claim that the submitted records are excepted from disclosure under section 552.103 of the Government Code. We have considered the exception and arguments you raise, and have reviewed the information submitted.²

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

²You have also submitted to this office information that apparently was sent for informational purposes only. In this ruling, we do not address the public disclosure of that information.

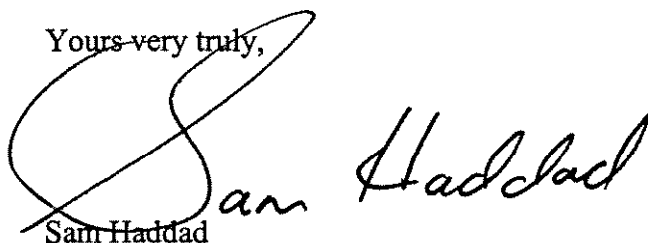
this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

In this instance, you explain that the city is currently involved in pending litigation, *Texas Valla Real Estate II, Inc. v. Robert Brooks and the City of Houston*, No. 98-50325 (80th Judicial District, Harris County, Texas, filed October 26, 1998).³ You have provided this office with a copy of the petition in that case. After reviewing the submitted materials, we conclude that litigation is pending and that the requested information relates to the pending litigation. The city may, therefore, withhold the requested information.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours-very truly,

A large, stylized handwritten signature in black ink, appearing to read "Sam Haddad". The signature is written over the typed name "Sam Haddad".

Sam Haddad
Assistant Attorney General
Open Records Division

³We note that in your original request for a ruling, you complied with the requirements of the act by raising an exception and submitting a representative sample of the requested information. See Gov't Code § 552.301. However, in the original brief, you asserted that litigation was anticipated. Since that time, you have supplemented your request for a ruling with a copy of a petition from a related pending lawsuit. This office will consider changes in circumstances surrounding litigation when timely informed by governmental body of changes. Open Records Decision No. 638 at 3 (1996).

SH/nc

Ref.: ID# 120800

Enclosures: Submitted documents

cc: Mr. Jim Lomonaco
Valla Real Estate II
2021 W. Governors Circle, #201
Houston, Texas 77092
(w/o enclosures)